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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Benjamin T. Drucker

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02/27/2006

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT

PAPER NUMBER

2665

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

7/1

<b>Office Action Summary</b>	<b>Application No.</b> 10/034,955	<b>Applicant(s)</b> DRUCKER ET AL.	
	<b>Examiner</b> Steven HD Nguyen	<b>Art Unit</b> 2665	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 37-46 been renumbered 37-46 (the claims contains two claims 37).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25-39 and 41-45 rejected under 35 U.S.C. 102(b) as being anticipated by Flavin (EP 0837578).

Regarding claims 25, 31 and 39, Flavin discloses an apparatus comprising a network interface to link to a network (Fig 1, Ref 1); a packet analyzer (Fig 1, ref 130 includes a packet analyzer for analyzing the packets communicating via Ref 1300, Col 7, lines 20-27, the router examining the packet) coupled to said interface to analyze a packet communicated to or from said network; a characteristic analyzer (Fig 1, Ref 130 for analyzing the packet and separating the packet based on the characteristic of the packet in order to assign a weight to a packet in order to count the packet based on the weight of the packet, if weight is zero, the counter device

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will not count the packet, col. 7, line 27 to col. 8, line 10; col. 8, line 40 to col. 9, line 6, col. 9, line 55 to col. 10, line 19) to analyze a characteristic of packets sent to or from said network, and, based on that characteristic, assign a packet weight, such that different packets are counted differently depending on their weights; and a device to count the weights of packets communicated to or from a network user (Col. 7, lines 25-26) and a server coupled to the metering devices to assemble metering reports from the metering devices (Fig 1, Ref 140 for collecting the usage information from the edge routers in order to generate a billing).

Regarding claims 26, 35 and 41, Flavin discloses a device to determine a list of devices which communicated packets through said network interface (Fig 2).

Regarding claims 27 and 42, Flavin discloses a weight definitions store coupled to said packet analyzer, to store weight values for different packet characteristics (Fig 4 is a weight table wherein each weight is assigned to a user for using to count the packets).

Regarding claims 28, 33 and 43, Flavin discloses packet analyzer analyzes packet headers to determine the characteristic of packet (Fig 2).

Regarding claims 29, 34 and 44, Flavin discloses a device to store a series of packet weights correlated to packet characteristics (Fig 4, col. 8, lines 40-52).

Regarding claims 30, 32 and 45, Flavin discloses assess a usage charge to a network user based on the accumulated weight (Col. 5, lines 27-35 and Fig 7, Ref 725).

Regarding claim 36, Flavin discloses dynamically updating weight definitions for different packet characteristics (Col. 8, line 40 to col. 9, lines 7 and col. 10, lines 11-19).

Regarding claim 37, Flavin discloses assigning a weight dependent at least in part on the time when the packet is received or transmitted (Col. 10, lines 11-19).

Regarding claim 38, Flavin inherently includes providing a plurality of usage monitors for a network (Fig 1).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 37 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flavin in view of Wynnyk (US 20030105855).

Regarding claim 37, Flavin fails to disclose assigning a weight based on the packet's size. In the same field of endeavor, Wynnyk discloses a method and system for assigning cost based on packet's size (page 6, Par [81-83]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and system for assigning rate based on the packet's size as discloses Wynnyk into the method and system of Flavin. The motivation would have been to provide a billing plan that suit the customer.

Regarding claim 40, Flavin fails to disclose the ratio of metering devices to network devices is in the range of 1:1 to 1:512. However, the examiner takes an official notices that a method and system for determining a ratio of metering devices and client devices on a network is well known and expected in the art at the time of invention was made in order to implement a distributed management network.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Meyer (USP 6813645) discloses a metering source for collecting information for using in the billing plans and transferring this information to a billing server.

Millar (US 20030093341) discloses a system and method for generating a variable billing by determining the usage information.

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571) 272-3159. The examiner can normally be reached on 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin can be reached on (571) 272-3134. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Steven HD Nguyen  
Primary Examiner  
Art Unit 2665